

BEFORE THE
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
STATE OF CALIFORNIA

In the Matter of:

RAUL G. MONREAL AND NORMA C.
MONREAL, OWNERS/OPERATORS

d.b.a. Border Tires Waste Tire Site

Respondents.

Case No. 2002-010399-ADH

OAH No. L2002110046

DECISION

On January 8, 2003, in San Diego, California, Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Jody Z. Feldman, Staff Counsel, represented the complainant California Integrated Waste Management Board (CIWMB).

Respondent Raul G. Monreal was present and represented himself and his wife Norma. Also present was Carlos Duenas, the tenant on the property in question that is owned by Mr. Monreal.

Evidence was received, the record was closed and the matter was submitted for decision on January 8, 2003.

FACTUAL FINDINGS

1. Jody Z. Feldman, Staff Counsel, CIWMB, filed the administrative complaint against respondents. In doing so she was acting in her official capacity.
2. CIWMB has the authority to inspect, permit, regulate and conduct enforcement actions against Waste Tire Facilities (WTFs) within the State of California under Public Resources Code section 42800, et seq. as well as regulations contained in Title 14 of the California Code of Regulations.

3. Raul G. Monreal and Norma C. Monreal are property owners of Assessor's Parcel Number 058-823-08, Calexico, Imperial County, California. Mr. Monreal inherited this property in or about 1993. This site, approximately two acres in size, is not a permitted waste tire facility (WTF).

4. On or about July 9, 2001, Vance Tracy of the CIWMB conducted a Waste Tire Facility Inspection of Border Tires WTF at Assessor's Parcel Number 058-823-08 and observed approximately 4,500 waste tires on the site. The tires were stored in a manner that violated the standards for storage, fire prevention and vector control. A written report of the inspection and a "Letter of Violation," dated October 2, 2001, was sent to Raul G. Monreal and Norma C. Monreal notifying them that the accumulated waste tires must be removed to a legal facility by a registered waste tire hauler by November 1, 2001.

5. On December 5, 2001, Vance Tracy once again conducted a site visit of the facility to determine the compliance status of the facility with the requirements of the letter of violation sent on or about October 2, 2001. Tracy determined that none of the waste tires had been removed from the facility. Additionally, the waste tires continued to be stored in a manner that violated the standards for storage, fire prevention and vector control.

6. On or about January 10, 2002, Clean Up & Abatement Order 2001-010224CAO was issued to Raul G. and Norma C. Monreal requesting that they remove all waste tires from their location by February 28, 2002. They were to submit copies of all destination receipts and waste tire manifests to the CIWMB on or before March 14, 2002.

7. On March 6, 2002, Vance Tracy conducted a site visit of the location and determined that over 4,000 waste tires were still located on site. During this site visit, Tracy met with Raul Monreal. Mr. Monreal explained that his tenant, Mr. Duenas, was operating a business called R-1 tires and that he would make sure that the site and the tenant would come into compliance with the laws and regulations concerning waste tire facilities. Specifically, it was agreed by Mr. Monreal and CIWMB staff that a registered waste tire hauler application package would be mailed to him, along with a copy of the standards, including the Public Resources Code definition of "Used Tire" and that he would, upon receipt, have his tenant, R-1 Tires register to haul waste tires and then remove the waste tires from the facility to an authorized location. In exchange, CIWMB staff agreed that they would not pursue issuing an administrative complaint immediately and to drop the pursuit of it altogether if the waste tires were cleaned up in a couple of months.

8. A check of CIWMB records in July 2002 revealed that no manifests had been received nor was there any record of respondents or R-1 Tires or any other entity (at that location) being registered to haul waste tires.

9. On July 16, 2002, Vance Tracy conducted another site visit to determine the compliance status of the facility. None of the previously estimated 4,500 tires had been removed. Although some of the waste tires appeared to be staged in the back of the facility, the waste tires continued to be stored in a manner that violated the standards for storage, fire prevention, and vector control.

10. It was not until the Monreals were served with the administrative complaint on or about December 18, 2002 that serious efforts at compliance were initiated. On the day of hearing, January 8, 2003, there were approximately 600 tires left at the site. The remainder had been removed by or at the direction of Mr. Duenas. Unfortunately, it does not appear that Mr. Duenas has applied for any waste tire hauler authorization and it does not appear that the tires were removed properly according to Board regulations.

11. Mr. Monreal is the owner of the parcel in question in Calexico. He is married with two children and works as a special agent for the United States Department of Transportation (USDOT) in the Federal Motor Carriers Safety Administration. He started with USDOT in March 2002. He is assigned to the border area and is generally charged with determining compliance with the provisions of the North American Free Trade Agreement (NAFTA) that relate to trucking companies. Before this he was, for eight years, a correctional support staff person for the Imperial County Sheriff assigned to the jail.

12. The site in question was acquired by Mr. Monreal in or about 1993 through inheritance from his mother. A gentleman named Mr. Fernando Lara started Border Tire on the site several years back and then left the area leaving waste tires abandoned and a big headache for respondents. Lara had approached respondents to rent a portion of the parcel to store waste tires for the purpose of sale to Mexico. In late 1997, Lara left as the business was not doing well. He left waste tires on the site.

13. In late 1998, respondents were approached by a Mr. Felipe Gonzales who wanted to rent containers (owned by respondents that were left by Mr. Monreal's father who was in the trucking business). Through Gonzales, respondents met Mr. Duenas in 1999. Mr. Duenas rented the entire two-acre parcel from respondents to conduct the business of storage and sale of waste tires. The initial rent was \$650 per month which has now grown to \$1,000 per month.

14. This is an unusual case for many reasons. The respondents, the Monreals, are by all accounts solid citizens who do not appear to be making a substantial amount of money from this two-acre site. Mr. Monreal inherited this property and unfortunately inherited the headaches as well. Mr. Monreal appeared to be under the mistaken belief that he did not have responsibility or control over his tenant and, therefore, did not have any potential liability for the violations that were clearly shown. Mr. Monreal attempted to get Mr. Duenas to comply. However, these efforts were ineffectual.

15. The Board and its staff have been models of restraint and made very reasonable efforts to assist respondent and/or Duenas to comply. They were very patient and issued the administrative complaint only as a last resort.

16. Ownership of this parcel brings with it certain obligations that exist irrespective of whether the parcel is thereafter rented to another. Respondent had a non-delegable duty to insure this site was in compliance with the laws and regulations of the Board. Despite what are clearly good faith efforts to do so, the property remained in

violation even on the day of the hearing. At no time did respondents comply with the regulations of the Board pertaining to fire prevention measures, vector control or safe storage of waste tires.

17. At the hearing, Mr. Monreal testified honestly about his efforts to insure compliance and that Mr. Duenas, who was present, wanted to comply with the law and would register. Unfortunately, good faith alone is not the measure by which these cases are determined. It is significant and mitigating that in the last three weeks approximately 3,000 tires had been removed from the site. It is also significant and not mitigating that it does not appear that the tires were removed by a permitted waste tire hauler. Furthermore, at no time up to the day of hearing did either respondent or Mr. Duenas apply to be permitted in any capacity by the CIWMB.

18. In determining the civil penalty, the administrative law judge has read, considered and applied the factors enumerated in Public Resources Code section 42852. The civil penalty imposed is meant to harmonize the various elements in the statute.

LEGAL CONCLUSIONS

1. By virtue of the Factual Findings 1-18, Raul and Norma Monreal are liable for civil penalties pursuant to Public Resources Code section 42850.1(b).

2. CIWMB's authority to assess civil penalties against the respondents is found in Public Resource Code section 42850.1(b)(1) which states:

"Any person who intentionally violates any provision of this chapter, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation of a separate provision or, for continuing violations, for each day that violation continues.

3. In determining the reasonableness and propriety of a civil penalty, Public Resources Code section 42852 provides that the hearing officer. . .

". . . shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that imposition of the proposed penalty will have on both the violator and on the regulated community as a whole."

4. Pursuant to Public Resources Code section 42846.5, the imposition of penalties in this administrative action may form the basis for a subsequent Board order permitting the board or its contractors access to the property mentioned herein to perform cleanup, abatement or remedial work under Public Resources Code section 42846.

5. By virtue of Factual Findings 1-18, respondents are in violation of Public Resources Code section 42834, which makes it unlawful to accept waste tires at a waste tire facility unless the operator has obtained a waste tire permit. Pursuant to Title 14, California Code of Regulations, section 18422(i), “operator” means owner if there is no operator.

6. By virtue of Factual Findings 1-18 respondents are in violation of Title 14, California Code of Regulations, section 18420, which requires that, unless exempted, the owner or operator of a waste tire facility obtain a permit from the CIWMB. Respondents do not and did not have any such permit.

7. By virtue of Factual Findings 1-18, respondents are in violation of Title 14, California Code of Regulations, section 17351 (Fire Prevention Measures) which lists specific equipment and water supply that must be available at a waste tire facility. Respondents did not have such equipment nor did they have such a water supply at the site.

8. By virtue of Factual Findings 1-18, respondents are in violation of Title 14, California Code of Regulations, section 17353 (Vector Control Measures) which lists requirements for the prevention of breeding and harborage of mosquitoes, rodents and other vectors at a waste tire facility. Respondents did not comply with these requirements.

9. By virtue of Factual Findings 1-18, respondents are in violation of Title 14, California Code of Regulations, section 17354 (Storage of Waste tires) which lists the requirements for the storage of waste tires at a waste tire facility. Respondents did not comply with these requirements.

10. By virtue of Factual Findings 1-18, respondents are in violation of Public Resources Code section 42845 in that they have failed to comply with Clean Up & Abatement Order 2001-010224CAO, which requires any person, upon order of the CIWMB, to clean up, abate or otherwise take remedial action at a waste tire facility.

ORDER

Respondents are assessed a civil penalty of \$5,000 payable within 30 days from the date they are served with a copy of this Decision.

DATED: _____

STEPHEN E. HJELT
Administrative Law Judge
Office of Administrative Hearings